

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THERESA PASSMORE,	:	CASE NO. 1:11-cv-01347
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
DISCOVER BANK,	:	
	:	
and	:	NOTICE OF REMOVAL BY DEFENDANT
	:	LEVY & ASSOCIATES, L.L.C.
	:	
LEVY & ASSOCIATES, LLC	:	
	:	
and	:	
	:	
YALE R. LEVY	:	
	:	
Defendants.	:	

Defendant Levy & Associates, L.L.C. hereby files its Notice of Removal of this action from the Court of Common Pleas, Lake County, Ohio, Case No. 10-CV-002054, to the United States District Court for the Northern District of Ohio, Eastern Division, and states as follows:

1. This case originated on July 12, 2010, when Discover Bank (“Discover”) filed suit in the Lake County Court against Theresa Passmore (“Passmore”), asserting claims for breach of contract and unjust enrichment. The next month, Passmore filed an Answer and Counterclaim against Discover and new party Defendants Yale R. Levy and Levy & Associates, L.L.C., based on the Fair Debt Collections Practices Act, Ohio’s Consumer Sales Practices Act, common law fraud, abuse of process, defamation and civil conspiracy.

2. On October 22, 2010, Discover voluntarily dismissed its claims against Passmore pursuant to Rule 41(A)(1).

3. Also on October 22, 2010, Discover moved to compel arbitration of Passmore's claims pursuant to the arbitration clause in the parties' agreement.

4. Defendants Yale R. Levy and Levy & Associates, L.L.C. moved to realign the parties to reflect their true positions in the litigation, *i.e.*, Passmore as Plaintiff and Discover, Yale R. Levy, and Levy & Associates, L.L.C. as Defendants, on December 9, 2010.

5. Defendants Yale R. Levy and Levy & Associates, L.L.C. moved to compel arbitration of Passmore's claims on February 17, 2011.

6. The Lake County Court issued an Order granting Yale R. Levy and Levy & Associates, L.L.C.'s motion to realign the parties on June 1, 2011, thereby formally acknowledging Passmore's role as the plaintiff and Yale R. Levy, Levy & Associates, L.L.C. and Discover as defendants.

7. The Lake County Court denied the Defendants' motions to compel arbitration on June 10, 2011 on the basis that the agreement between Discover and Passmore was not properly authenticated. Copies of all of the pleadings and documents filed in the Lake County Court case are attached hereto as Exhibit A in accordance with 28 U.S.C. § 1446(a).

8. The action is a civil action over which this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because Passmore has alleged claims under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p. The action is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441.

9. This Notice of Removal is timely as it is filed within 30 days of Defendant Levy & Associates, L.L.C.'s receipt of a copy of the Lake County Court's Order realigning the parties and rendering this case removable, in accordance with 28 U.S.C. § 1446(b). *See Hrivnak v. NCO Portfolio Mgmt., Inc.*, 723 F.Supp.2d 1020, 1028 (N.D. Ohio 2010).

10. Discover and Yale R. Levy, the other defendants in the case, have consented to this removal.

11. Levy & Associates, L.L.C. will, promptly after the filing of this Notice of Removal, give written notice of this Notice of Removal to all parties and will file a copy of this Notice of Removal with the Clerk of the Court of Common Pleas of Lake County, Ohio.

WHEREFORE, Levy & Associates, L.L.C. prays that this action be removed from the Court of Common Pleas, Lake County, Ohio, to this Court pursuant to 28 U.S.C. § 1441, and that this Court accept and take jurisdiction of this action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2011 the foregoing Notice of Removal was served via this Court's electronic filing system and via Regular U.S. Mail, postage prepaid on July 1, 2011, to the following:

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